

REMARKS

The Final Office Action dated June 19, 2006 contained a final rejection of claims 1-26. The Applicants have amended independent claims 1, 5, 6, 7, 9, 11, 12, 14, 15, 16, 18-20, 22-24 and 26. Claims 1-26 are in the case. Please consider the present amendment with the attached Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This amendment is in accordance with 37 C.F.R. § 1.114. Reexamination and reconsideration of the application, as amended, are requested.

The Office Action rejected claims 1-7, 9, 11, 12 and 14-25 under 35 U.S.C. 103(a) as allegedly being unpatentable over Suzuki (U.S. Patent No. 6,313,745) in view Treyz (U.S. Patent No. 6,587,835). The Office Action rejected claims 8, 10, 13 and 26 under 35 U.S.C. 103(a) as allegedly being unpatentable over Suzuki (U.S. Patent No. 6,313,745) in view Treyz (U.S. Patent No. 6,587,835) and further in view of Richards (U.S. Patent Publication No. 2001/0039519).

The Applicant respectfully traverses these rejections based on the amendments to the claims and the arguments below.

The Applicants' independent claims now include sorting both the list of items and the ephemeral items based on layouts and physical locations and placements of the items in a particular store. The sorted list is configured to locate the list of items in proximity to the ephemeral items to encourage purchase of the ephemeral items and the sorted list is presented to the consumer when the consumer enters the store. Support for the newly amended claims can be found throughout the specification and at least in FIGS. 3-5 and paragraphs [0027] and [0050] – [0056] of the Application specification (U.S. Patent Publication No. 2003/0023483).

The Applicants respectfully submit that the combined cited references do not disclose, teach, or suggest all of the above claimed features. For example, Suzuki et al. disclose retrieving information about a product that might be purchased by a consumer (see col. 3, lines 50-53 of Suzuki et al.), Treyz discloses sending electronic coupons (see Abstract of Treyz) and Richards discloses a system with buying information and recommendations to help consumers purchase products

from retail merchants (see Abstract of Richards). Although Richards disclose sorting items based on the physical route within the store (see paragraph [0061] of Richards), the combined references do not disclose sorting both the items and the ephemeral items based on layouts and physical locations and placements, configuring the sorted list to locate the items in proximity to the ephemeral items to encourage purchase of the ephemeral items and presenting the sorted list when the consumer enters the store, like the Applicants' claimed invention.

Instead, Richards discloses making a sorted list of recommended purchases based on pricing information and not making a sorted list of both items in inventory and ephemeral items related to the items specified as purchase preference items. Namely, Richards explicitly states that "[U]sing the price, re-order and unit price index information the system recommends products that the consumer should consider purchasing. For products purchased from retail merchants with physical stores the system will create a shopping list for each store listing the products in order of location in the physical store for quick purchase." (see Abstract and paragraphs [0020], [0061] and [0090] – [0091] of Richards). Hence, among other things, Richards does not disclose sorting both items in inventory and ephemeral items related to the items specified as purchase preference items and wherein the sorted list is configured to locate the list of items in proximity to the ephemeral items to encourage purchase of the ephemeral items, like the Applicants' claimed invention.

Therefore, since the combined references are missing features of the Applicants' claimed invention, the combined references cannot render the Applicants' invention obvious. This failure of the cited reference to disclose, suggest or provide motivation for the Applicants' claimed invention indicates a lack of a prima facie case of obviousness and, thus, the rejections should be withdrawn (MPEP 2143).

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (MPEP § 2143.03).

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Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. Additionally, in an effort to further the prosecution of the subject application, the Applicants kindly invite the Examiner to telephone the Applicants' attorney at (818) 885-1575 if the Examiner has any questions or concerns. Please note that all correspondence should continue to be directed to:

Hewlett Packard Company
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

Respectfully submitted,
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Edmond A. DeFrank
Reg. No. 37,814
Attorney for Applicants
(818) 885-1575 TEL
(818) 885-5750 FAX